

**UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA
(READING)**

IN RE:

Frank Ortiz
Debtor

CHAPTER 13

CASE NO.: 18-18041-amc

HEARING DATE: April 2, 2020

TIME: 11: 00 AM

LOCATION: 4th Floor

**MOTION OF THE BANK OF NEW YORK MELLON FKA THE BANK OF NEW YORK AS
TRUSTEE FOR THE CERTIFICATEHOLDERS OF CWABS, INC., ASSET BACKED
CERTIFICATES, SERIES 2004-2, FOR RELIEF FROM THE AUTOMATIC STAY
PROVISIONS OF 11 U.S.C. § 362(A) AND CO-DEBTOR STAY PROVISION OF 11 U.S.C. § 1301
TO PERMIT MOVANT TO COMMENCE OR CONTINUE FORECLOSURE PROCEEDINGS
ON 711 WYANDOTTE STREET, BETHLEHEM, PA 18015**

AND NOW COMES, THE BANK OF NEW YORK MELLON FKA THE BANK OF NEW YORK AS TRUSTEE FOR THE CERTIFICATEHOLDERS OF CWABS, INC., ASSET BACKED CERTIFICATES, SERIES 2004-2 (“Movant”), by and through its attorneys, Hill Wallack LLP, and respectfully represents as follows:

1. This Motion (the “Motion”) is filed by Movant for relief from the automatic stay provisions of 11 U.S.C. §362(a) to permit Movant to continue its foreclosure on real property located at 711 Wyandotte Street, Bethlehem, PA 18015 (the “Mortgaged Premises”).
2. On or about December 2, 2003, Frank Ortiz (“Debtor”) executed and delivered to AMERICA’S WHOLESALE LENDER a Promissory Note (“Promissory Note”) in the principal amount of \$76,000.00. A true and correct copy of the Promissory Note is attached hereto and made a part hereof as Exhibit “A.”
3. To secure the obligations under the Promissory Note, Debtor and Nanette Ortiz (“Co-Debtor”) granted MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., AS NOMINEE FOR AMERICA’S WHOLESALE LENDER, its successors and assigns, a valid, enforceable, and recorded first lien and mortgage (the “Mortgage”) on the Mortgaged Premises, all of the terms of which are incorporated herein by reference as if fully set forth at length, which Mortgage was thereafter recorded in the Northampton County Recorder of Deeds Office on December 10, 2003 as Instrument Number 2003087974. A true and correct copy of the Mortgage is attached hereto and made a part hereof as Exhibit “B.”

4. Movant is the current mortgagee by virtue of an Assignment of Mortgage. A true and correct copy of the full recorded Assignment of Mortgage Chain is attached hereto and made apart hereof as Exhibit "C."

5. On or about April 30, 2013, Debtor entered into a Loan Modification Agreement with prior mortgagee, Bank of America, N.A. The Modification Agreement modified the maturity date of the Mortgage and the Principal balance of the Note. A true and correct copy of the Loan Modification Agreement is attached hereto and made apart hereof as Exhibit "D."

6. On December 5, 2018, Debtor filed a petition for relief under Chapter 13 of the United States Bankruptcy Code.

7. The Debtor in his Schedule A/B filed December 11, 2019 states that the Mortgaged Premises is valued at \$130,000.00.

8. Movant is the holder of a secured claim in the amount of \$137,690.96, with pre-petition arrears due in the amount of \$40,507.01 together with additional legal fees and costs and taxes due and payable on the Mortgaged Premises per the Proof of Claim filed February 12, 2019 as Claim #3-1.

9. As of February 20, 2020, there is a total debt amount of \$143,378.63 due and owing on the Mortgage. Please see below image for full breakdown.

| | |
|------------------------|---------------------|
| Principal Balance | \$102,728.37 |
| Interest To 2/20/2020 | \$26,986.14 |
| Fees | \$6,316.72 |
| Prepayment Penalty | \$0.00 |
| Release Fees | \$0.00 |
| Funds owed by borrower | \$8,187.40 |
| Funds owed to borrower | (\$840.00) |
| Total Payoff | \$143,378.63 |

10. The current monthly payment on the Mortgage is \$1,310.35.

11. The Debtor's Chapter 13 Plan ("Plan") was filed December 5, 2018.

12. The Plan was confirmed September 5, 2019.

13. The Debtor is currently in arrears post-petition for his failure to pay the post-petition payments due July 1, 2019 through February 1, 2020 for a total of \$10,473.32 (\$1,308.77 x 6 months) + (\$1,310.35 x 2 months), less a suspense balance in the amount of \$1,275.38, for a total amount due of \$9,197.94.

14. Consequently, Movant is entitled to relief from the automatic stay pursuant to 11 U.S.C. § 362(d) (1) and Co-Debtor stay provision of 11 U.S.C. § 1301 as the Debtor has defaulted on post petition payments.

WHEREFORE, THE BANK OF NEW YORK MELLON FKA THE BANK OF NEW YORK AS TRUSTEE FOR THE CERTIFICATEHOLDERS OF CWABS, INC., ASSET BACKED CERTIFICATES,SERIES 2004-2 respectfully requests that this Court enter an Order granting relief from the automatic stay provisions of 11 U.S.C. § 362(a) and Co-Debtor stay provision of 11 U.S.C. § 1301 to allow Movant to proceed in its foreclosure of the Mortgaged Premises, to name the Debtor in the foreclosure suit solely for the purpose of foreclosing their interests in the Mortgaged Premises, and to allow Movant, or any other purchaser at the Sheriff's Sale, to take any legal action necessary to gain possession of the Mortgaged Premises.

Respectfully submitted,

By: /s/ Michael J. Shavel
Michael J. Shavel, Esq., Attorney ID 60554
Hill Wallack, LLP
777 Township Line Road, Suite 250
Yardley, PA 19067
Telephone 215-579-7700
Facsimile 215-579-9248
Email: mshavel@hillwallack.com